IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1568 OF 2005

Shri Santosh Laxman Patil & ors.... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

Mr.Kuldeep S. Patil, advocate for Applicants.

Mr.P.D.Dalvi, advocate for Respondent(original complainant)

Mr.A.S.Shitole, APP for State.

CORAM : V.M.KANADE,J
DATE : MARCH 22, 2005.

P.C. :

1. Heard the learned counsel appearing for the applicant and the learned APP for the State. Also heard the learned counsel for the respondent-original complainant though he has not been joined as a party respondent.

2. This is an application filed by the original accused challenging the order passed by the J.M.F.C. dated 23/3/2004 on application filed by the complainant which was confirmed by the Sessions Court in Criminal Revision Application.

3. Brief facts which are relevant in deciding this criminal application are as under :

4. Charge sheet was filed by Shirala Police Station under section 324, 120(B) r/w 34 of Indian Penal Code against the present applicants. After charge-sheet was filed in the Trial Court, an application was made by the complainant under section 216 of the Cr.P.C. requesting the learned Magistrate to add Section 307 and 326 of the I.P.C. to the charge sheet which was filed in the Trial Court. The learned Magistrate allowed the said application. It is admitted position that when the said application was filed, charge was not framed against the accused. This order was challenged in revision. The order however, was confirmed.

5. The applicants are challenging both the orders dated 23/3/2004 passed by the J.M.F.C. Shirala and order dated 15/12/2004 passed in Revision by the Sessions Court at Islampur.

6. It is submitted by the learned counsel for petitioner that the learned Magistrate does not have the power to alter or amend the charge-sheet which was

filed by the police. He submitted that JMFC was competent to consider the application under section 216 of the Cr.P.Code only at the time of framing of charge and he does not have any jurisdiction to alter the charge-sheet. In support of the said submission, he relied on the Judgment of the Supreme court in the case of **Abhinandan Jha V/s Dinesh Mishra reported in AIR 1968 Supreme Court 117**, wherein it is held that the Magistrate does not have power to direct the police to file a charge-sheet.

7. I have heard the learned counsel for the applicant and the complainant and the learned APP for the State. It is an admitted position that the charge has not been framed so far. A short question which falls for consideration before this court is whether the trial court had jurisdiction to amend the charge sheet by addition provisions of Sections 307 and 326 of the Indian Penal Code.

8. In my view, this question will have to be answered in the negative. From the scheme of Code of Criminal Procedure, it can be seen that the power of police and power of Magistrate operate in two different spheres and the Magistrate has no power to

direct the police authorities to file a charge-sheet or to add or subtract any offence from the charge-sheet which is filed. The Magistrate would have the jurisdiction on the basis of the charge sheet to frame an appropriate charge and at the stage of framing of charge, Magistrate would have jurisdiction to consider an application which is filed under section 216 of Cr.P.C. for addition of certain offences or deletion of certain offences from the charge. I am fortified by the Judgment of the Supreme Court in the case of **Abhinandan Jha & Ors. V/s. Dinesh Mishra reported in AIR S.C. 117** relied upon by the counsel for the applicant. In the said case, police had filed an application under section 169 of the Cr.P.Code on the ground that there is no evidence against the accused. The Magistrate however, on the said application directed the police to file charge-sheet against the accused. The Apex Court after considering provisions of the Criminal Procedure Code has observed in paragraph No.18,19 and 20 as under :

> (18) We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and

> collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.
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> (19) The question can also be considered from another point of view. Supposing the police send a report viz. a charge-sheet, under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under section 169? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and make suitable action, according to law, he cannot certainly infringe (sic.impinge?) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.
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> (20) Therefore, to conclude, there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under section 169 of the Code, that there is no case made out for sending up an accused for trial.

9. It is thus, evident that a Magistrate could have considered an application which was filed at

Exh.12 only at the time of framing of charge. The order passed by the Magistrate dated 23/3/2004 and order passed by the Court of Sessions in Criminal Revision Application No. 14/2004 dated 15.12.2004 are hereby quashed and set aside.

10. It is however, clarified that the application at Exh.12 is kept pending and the same shall be considered by the Magistrate at the time of framing of the charge. All questions and contentions raised by both the parties are kept open.

11. Criminal Application is disposed of in the above terms.

. Parties to act on the authenticated copy of this order.

(V.M.KANADE,J)